



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/736,465

12/15/2003

Jason Chad Eubanks

16352-US

3466

30689

7590

09/23/2009

DEERE & COMPANY
ONE JOHN DEERE PLACE
MOLINE, IL 61265

EXAMINER

TORRES, ALICIA M

ART UNIT

PAPER NUMBER

3671

MAIL DATE

DELIVERY MODE

09/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DEERE & COMPANY

Appeal 2009-005619
Application 10/736,465
Technology Center 3600

Decided: September 23, 2009

Before JAMESON LEE, RICHARD TORCZON, and
SALLY C. MEDLEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, Deere & Company (Deere), under 35 U.S.C. § 134(a) from a final rejection of claims 1 and 8. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

References Relied on by the Examiner

Scarnato et al. (Scarnato) 3,673,779 July 4, 1972

The Rejections on Appeal

The Examiner rejected claims 1 and 8 under 35 U.S.C. § 102(b) as anticipated by Scarnato.¹

The Invention

The invention relates to crop mowing implements having rotary disc cutter bars and a crop-lifting arrangement for directing harvested crop to a crop processing device located on the mowing implement. (Spec. pp. 1-2; ¶¶ 1, 5, and 6.)

Independent claim 1 is reproduced below (App. Br. 5 Claims App'x)²:

1. In combination with

 a mowing implement equipped with a rotary disc cutter bar having a gear housing extending transversely, relative to a forward direction of travel during mowing operation, and including a plurality of transversely spaced, knife-carrying rotary discs mounted, and being respectively driven, for rotating in desired directions above an upper surface of said gear housing for cutting and delivering crop into a discharge zone at the rear of the cutter bar,

 a crop processing device located in said discharge zone just downstream from said cutter bar,

¹ Although page 3 of the Examiner's Answer indicates claim 7 was rejected as anticipated by Scarnato (Ans. 3:3), page 6 indicates that the rejection of claim 7 is withdrawn (Ans. 6:5). We regard the rejection as withdrawn.

² Claim 1 has been reproduced in a format that complies with 37 C.F.R. § 1.75(i).

and a crop-lifting arrangement for directing cut crop delivered by said rotary discs upwardly and rearwardly from said cutter bar so as to be in a favorable location for engagement by said crop processing device,

the improvement comprising:

said crop-lifting arrangement including a lip extending transversely across, and projecting substantially upright from, at least a rear region of said cutter bar located just forward of said crop processing device; and

said lip extending closely adjacent to, and to a height above, a path traced by knives of said knife-carrying rotary discs.

B. ISSUE

Has Deere shown that the Examiner was incorrect in finding that Scarnato discloses a lip that is “substantially upright”?

C. FINDINGS OF FACT

1. Scarnato discloses a harvesting machine for cutting and conditioning crops. (Scarnato 1:18-22.)

2. Scarnato's Figure 4 is reproduced below:

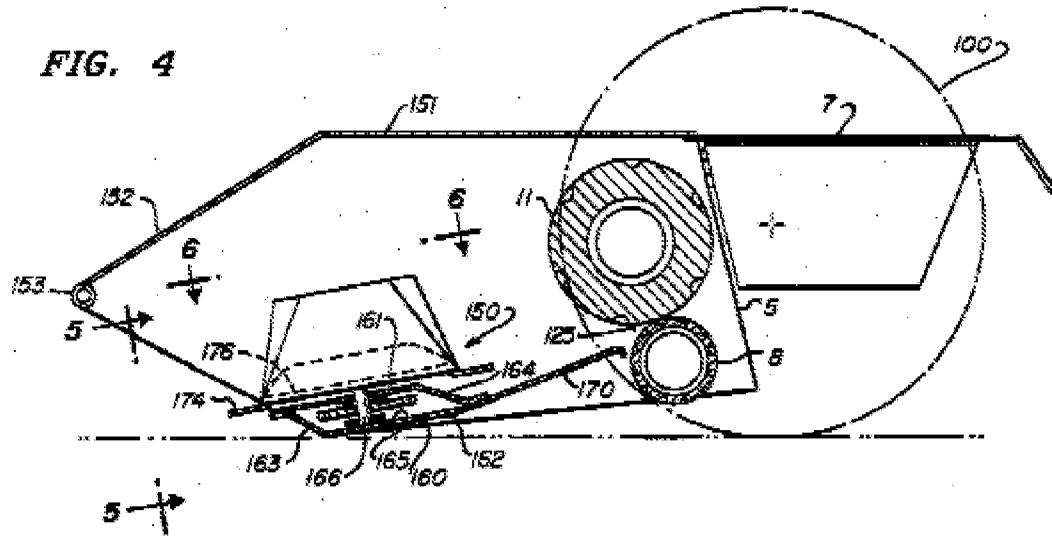


Figure 4 above depicts a harvesting machine.

D. ANALYSIS

The Examiner rejected claims 1 and 8 as anticipated by Scarnato. Dependent claim 8 is argued collectively with independent claim 1. Claim 1 requires “a lip extending transversely across, and projecting substantially upright from, at least a rear region of said cutter bar” The dispute centers on the meaning of “substantially upright.”

The Examiner determined that “upright” means vertical. (Ans. 5:7-8.) That meaning is not in dispute. Claim 1 thus requires a lip that is substantially vertical. The Examiner found that Scarnato discloses a crop-lifting arrangement that includes a lip 170 that extends substantially upright from cutter bar 150. (Ans. 3:16-17.) Evidently, according to the Examiner, Scarnato’s “lip” 170 is “substantially upright” because it extends upwardly above a horizontal plane. (*Id.* at 5:6-12.)

Scarnato's Figure 4 is reproduced below:

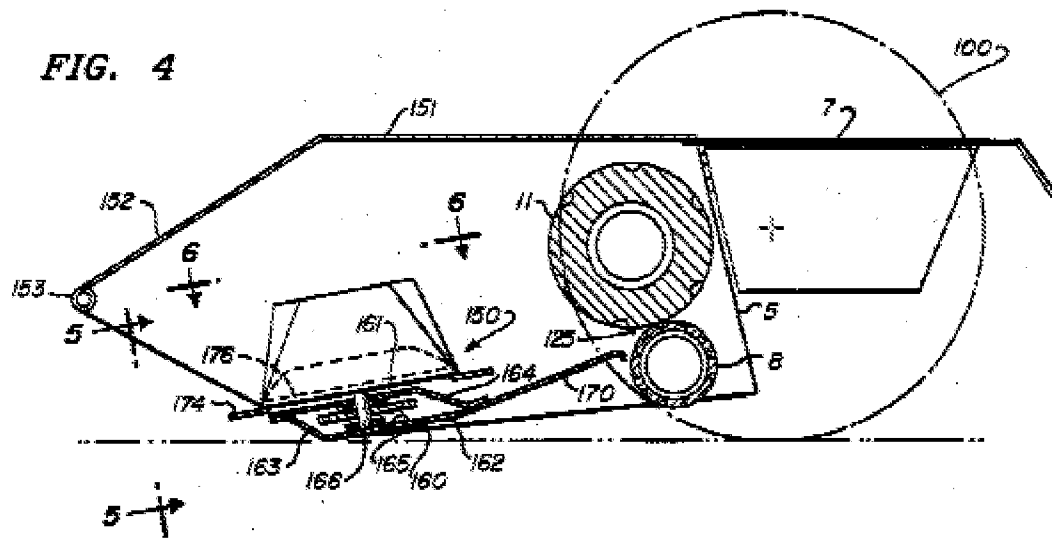


Figure 4 above depicts a harvesting machine.

For the issue on appeal, we need not determine the precise angle of incline beyond which a structure becomes “substantially upright.” At a minimum, a lip that is “substantially upright” must be more vertical than horizontal. Scarnato’s guide wall 170, however, is more horizontal than vertical. By the Examiner’s own stated definition of “upright” as meaning vertical, guide wall 170 is not substantially upright. It is incorrect to regard everything that is not flat or perfectly horizontal as substantially vertical.

We do not sustain the rejection of claims 1 and 8 as anticipated by Scarnato.

E. CONCLUSION

Deere has shown that the Examiner was incorrect in finding that Scarnato discloses a lip that is “substantially upright.”

Appeal 2009-005619
Application 10/736,465

F. ORDER

The rejection of claims 1 and 8 under 35 U.S.C. § 102(b) as anticipated by Scarnato is reversed.

REVERSED

saw

DEERE & COMPANY
ONE JOHN DEERE PLACE
MOLINE, IL 61265